

**ASSEMBLY BILL**

**No. 2073**

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**Introduced by Assembly Member Benoit**

February 19, 2008

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An act to amend Section 668 of the Harbors and Navigation Code, to amend Section 191.5 of the Penal Code, to amend Sections 23540, 23546, 23550, 23560, 23566, and 23612 of, and to add Section 23550.7 to, the Vehicle Code, relating to driving under the influence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2073, as introduced, Benoit. Drug and alcohol-related offenses: motor vehicles and vessels.

(1) Existing law prohibits a person from operating a vessel or manipulating water skis, an aquaplane, or a similar device, while under the influence of an alcoholic beverage, a drug, or the combined influence of an alcoholic beverage and a drug. Existing law expressly prohibits this conduct under various specific circumstances.

Under existing law, a person who has a previous conviction of an offense under these provisions or a previous separate conviction for specified other offenses, including offenses related to operating a vessel or motor vehicle while under the influence of an alcoholic beverage, a drug, or the combined influence of an alcoholic beverage or drug, within 7 years of the commission of a current offense under these provisions is subject to increased sanctions.

This bill would substitute a 10-year condition for the 7-year condition as a condition to imposing the increased sanctions on repeat offenders.

(2) Existing law prohibits a court from absolving from certain penalties and fines a person who is convicted of a specified offense involving the operation of a vessel while under the influence of an

alcoholic beverage, drug, or both, within 7 years of a conviction for a similar offense or an offense when the separate conviction resulted from the operation of a motor vehicle.

This bill would instead prohibit the court from absolving a person if the conviction occurs within 10 years of the specified convictions, rather than 7 years.

(3) Existing law provides that vehicular manslaughter while intoxicated is punishable by imprisonment in a county jail for not more than one year or by imprisonment in the state prison for 16 months or 2 or 4 years.

This bill would increase the term of imprisonment in the state prison to 2, 4, or 6 years.

(4) Under existing law, it is unlawful to drive a motor vehicle while under the influence of an alcoholic beverage, a drug, or both, or with 0.08% or more, by weight, of alcohol in one's blood, or while addicted to the use of a drug. There is another crime of driving under the influence of alcohol, a drug, or both, or with 0.08% or more, by weight, alcohol in one's blood, and causing injury to another person. Under existing law, for violations of each of these offenses, commonly known as driving under the influence and driving under the influence causing injury, respectively, (DUI), a court may impose sanctions, as specified. Existing law imposes increased sanctions on persons who have previously been convicted of a DUI offense within 10 years of the commission of a current specified similar offense.

This bill would similarly impose increased sanctions on a person who has been charged with a DUI offense and has previously been convicted of operating a vessel or manipulating water skis, an aquaplane, or a similar device while under the influence of an alcoholic beverage, drug, or the combined influence of an alcoholic beverage and drug, or a similar offense.

The bill would also require a person convicted of specified vehicle offenses while under the influence to receive a full, separate, and consecutive 3-year prison term for each prior felony conviction of the same or similar offense without regard to whether the prior felony conviction resulted in a term of imprisonment. The bill would also make that person ineligible for probation and would prohibit the court from striking any allegation or finding made under these provisions.

(5) Existing law provides that a person who is lawfully arrested for driving under the influence of a drug or the combined influence of an alcoholic beverage and drug has a choice of whether a chemical test to

determine his or her drug or drug and alcohol level shall be a blood, breath, or urine test. If the person chooses to submit to a breath test, he or she may also be requested to submit to a blood or urine test if the officer has reasonable cause to believe that the person was driving under the influence of a drug or the combined influence of an alcoholic beverage and a drug and if the officer has a clear indication that a blood or urine test will reveal evidence of the person being under the influence.

This bill would revise these provisions to delete the person's option to choose the type of test and instead require that the person take a blood test if the arresting officer has a clear indication that a blood test will reveal that the person is under the influence of a drug or the combined influence of an alcoholic beverage and drug. The bill would require that if a blood test is unavailable, then a urine test may be given.

(6) By creating new penalty enhancements for existing crimes, the bill would impose a state-mandated local program.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 668 of the Harbors and Navigation Code  
2 is amended to read:  
3 668. (a) ~~Any~~A person who violates subdivision (c) of Section  
4 652, Section 654, 654.05, 654.06, 655.7, 658.3, 659, 673, 674, or  
5 754, or any regulations adopted pursuant thereto, or any regulation  
6 adopted pursuant to Section 655.3 relating to vessel equipment  
7 requirements, is guilty of an infraction, punishable by a fine of not  
8 more than two hundred fifty dollars (\$250).  
9 (b) (1) ~~Any~~A person who violates Section 655.2, or any  
10 regulation adopted pursuant thereto, or, except as provided in  
11 subdivision (a), any regulation adopted pursuant to Section 655.3,  
12 is guilty of a misdemeanor and shall be punished by a fine of not  
13 more than one hundred dollars (\$100) or imprisonment in the  
14 county jail for not more than five days, or by both that fine and  
15 imprisonment, for each violation.

1 (2) ~~Any~~A person who violates subdivision (a) or (b) of Section  
2 658 is guilty of a misdemeanor and shall be punished by a fine of  
3 not more than two hundred dollars (\$200) for each violation.

4 (3) ~~Any~~A person who violates subdivision (d) of Section 652,  
5 Section 652.5, subdivision (a) of Section 655, Section 655.05, 656,  
6 or 656.1, subdivision (d) or (e) of Section 658, Section 663.6 or  
7 665, or any rules and regulations adopted pursuant to subdivision  
8 (b) or (c) of Section 660, is guilty of a misdemeanor and shall be  
9 punished by a fine of not more than one thousand dollars (\$1,000)  
10 or imprisonment in the county jail for not more than six months,  
11 or by both that fine and imprisonment, for each violation.

12 (c) (1) ~~Any~~A person convicted of a violation of Section 656.2  
13 or 656.3 shall be punished by a fine of not less than one thousand  
14 dollars (\$1,000) or more than ten thousand dollars (\$10,000), or  
15 by imprisonment in the state prison or in the county jail for not  
16 more than one year, or by both that fine and imprisonment.

17 (2) In imposing the minimum fine required by this subdivision,  
18 the court shall take into consideration the defendant's ability to  
19 pay the fine and, in the interest of justice for reasons stated in the  
20 record, may reduce the amount of that minimum fine to less than  
21 the amount otherwise required by this subdivision.

22 (d) ~~Any~~A person convicted of a violation of Section 658.5 shall  
23 be punished by a fine of not more than one hundred dollars (\$100).

24 (e) ~~Any~~A person convicted of a first violation of subdivision  
25 (b), (c), (d), or (e) of Section 655, or of a violation of Section 655.4,  
26 shall be punished by a fine of not more than one thousand dollars  
27 (\$1,000) or imprisonment in the county jail for not more than six  
28 months, or by both that fine and imprisonment. If probation is  
29 granted, the court, as a condition of probation, may require the  
30 person to participate in, and successfully complete, an alcohol or  
31 drug education, training, or treatment program, in addition to  
32 imposing any penalties required by this code. In order to enable  
33 all persons to participate in licensed programs, every person  
34 referred to a program licensed pursuant to Section 11836 of the  
35 Health and Safety Code shall pay that program's costs  
36 commensurate with that person's ability to pay as determined by  
37 Section 11837.4 of the Health and Safety Code.

38 (f) ~~Any~~A person convicted of a second or subsequent violation  
39 of subdivision (b), (c), (d), or (e) of Section 655 within ~~seven~~ 10  
40 years of the first conviction of any of those subdivisions or

subdivision (f) of Section 655, or any person convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 within ~~seven~~ 10 years of a separate conviction of *Section 191.5* or subdivision (a) or (b) of Section 192.5 of the Penal Code, or a separate conviction of Section 23152 or 23153 of the Vehicle Code ~~or Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code~~, when the separate conviction resulted from the operation of a motor vehicle, shall be punished by a fine of not more than one thousand dollars (\$1,000) or imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. If probation is granted, the court, as a condition of probation, may require the person to do either of the following, if available in the county of the person's residence or employment:

(1) Participate, for at least 18 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code.

(2) Participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. A person ordered to treatment pursuant to this paragraph shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this paragraph is a basis for reducing any other probation requirement.

(g) ~~Any~~ A person convicted of a violation of subdivision (f) of Section 655 shall be punished by imprisonment in the state prison,

1 or in the county jail for not less than 90 days or more than one  
2 year, and by a fine of not less than two hundred fifty dollars (\$250)  
3 or more than five thousand dollars (\$5,000). If probation is granted,  
4 the court, as a condition of probation, may require the person to  
5 participate in, and successfully complete, a program licensed  
6 pursuant to Chapter 9 (commencing with Section 11836) of Part  
7 2 of Division 10.5 of the Health and Safety Code, if available in  
8 the person's county of residence or employment, as designated by  
9 the court. In order to enable all required persons to participate,  
10 each person shall pay the program costs commensurate with the  
11 person's ability to pay as determined pursuant to Section 11837.4  
12 of the Health and Safety Code.

13 (h) (1) If ~~any~~ a person is convicted of a violation of subdivision  
14 (f) of Section 655 within ~~seven~~ 10 years of a separate conviction  
15 of a violation of subdivision (b), (c), (d), or (e) of Section 655 and  
16 is granted probation, the court shall impose as a condition of  
17 probation that the person be confined in the county jail for not less  
18 than five days or more than one year and pay a fine of not less than  
19 two hundred fifty dollars (\$250) or more than five thousand dollars  
20 (\$5,000).

21 (2) If ~~any~~ a person is convicted of a violation of subdivision (f)  
22 of Section 655 within ~~seven~~ 10 years of a separate conviction of  
23 a violation of subdivision (f) of Section 655, ~~of Section 191.5 or~~  
24 subdivision (a) or (b) of Section 192.5 of the Penal Code, or Section  
25 23152 or 23153 of the Vehicle Code ~~or Section 191.5 or~~  
26 ~~subdivision (a) of Section 192.5 of the Penal Code~~, when the  
27 separate conviction resulted from the operation of a motor vehicle,  
28 and is granted probation, the court shall impose as a condition of  
29 probation that the person be confined in the county jail for not less  
30 than 90 days or more than one year, and pay a fine of not less than  
31 two hundred fifty dollars (\$250) or more than five thousand dollars  
32 (\$5,000), and the court, as a condition of probation, may order that  
33 the person participate in a manner satisfactory to the court, in a  
34 program licensed pursuant to Chapter 9 (commencing with Section  
35 11836) of Part 2 of Division 10.5 of the Health and Safety Code,  
36 if available in the county of the person's residence or employment.  
37 In order to enable all required persons to participate, each person  
38 shall pay the program costs commensurate with the person's ability  
39 to pay as determined pursuant to Section 11837.4 of the Health  
40 and Safety Code.

(i) The court shall not absolve a person who is convicted of a violation of subdivision (f) of Section 655 within ~~seven~~ *ten* years of a separate conviction of a violation of subdivision (b), (c), (d), (e), or (f) of Section 655, ~~of Section 191.5 or~~ subdivision (a) or (b) of Section 192.5 of the Penal Code, or Section 23152 or 23153 of the Vehicle Code ~~or Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code~~, when the separate conviction resulted from the operation of a motor vehicle, from the minimum time in confinement provided in this section and a fine of at least two hundred fifty dollars (\$250), except as provided in subdivision (h).

(j) Except in unusual cases where the interests of justice demand an exception, the court shall not strike a separate conviction of an offense under subdivision (b), (c), (d), (e), or (f) of Section 655 ~~or of Section 191.5 or~~ subdivision (a) or (b) of Section 192.5 of the Penal Code, or Section 23152 or 23153 of the Vehicle Code ~~or Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code~~, when the separate conviction resulted from the operation of a motor vehicle, for purposes of sentencing in order to avoid imposing, as part of the sentence or as a term of probation, the minimum time in confinement and the minimum fine, as provided in this section. When a separate conviction is stricken by the court for purposes of sentencing, the court shall specify the reason or reasons for the striking order. On appeal by the people from an order striking a separate conviction, it shall be conclusively presumed that the order was made only for the reasons specified in the order, and the order shall be reversed if there is no substantial basis in the record for any of those reasons.

(k) A person who flees the scene of the crime after committing a violation of Section 191.5 or paragraph (1) of subdivision (c) of Section 192 of the Penal Code shall be subject to subdivision (c) of Section 20001 of the Vehicle Code.

~~(l) Any~~ A person who violates Section 654.3 is guilty of an infraction punishable by a fine of not more than five hundred dollars (\$500) for each separate violation.

SEC. 2. Section 191.5 of the Penal Code is amended to read:

191.5. (a) Gross vehicular manslaughter while intoxicated is the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driving was in violation of Section 23140, 23152, or 23153 of the Vehicle Code, and the killing was either the proximate result of the commission of an

1 unlawful act, not amounting to a felony, and with gross negligence,  
2 or the proximate result of the commission of a lawful act that might  
3 produce death, in an unlawful manner, and with gross negligence.

4 (b) Vehicular manslaughter while intoxicated is the unlawful  
5 killing of a human being without malice aforethought, in the  
6 driving of a vehicle, where the driving was in violation of Section  
7 23140, 23152, or 23153 of the Vehicle Code, and the killing was  
8 either the proximate result of the commission of an unlawful act,  
9 not amounting to a felony, but without gross negligence, or the  
10 proximate result of the commission of a lawful act that might  
11 produce death, in an unlawful manner, but without gross  
12 negligence.

13 (c) (1) Except as provided in subdivision (d), gross vehicular  
14 manslaughter while intoxicated in violation of subdivision (a) is  
15 punishable by imprisonment in the state prison for 4, 6, or 10 years.

16 (2) Vehicular manslaughter while intoxicated in violation of  
17 subdivision (b) is punishable by imprisonment in a county jail for  
18 not more than one year or by imprisonment in the state prison for  
19 ~~16 months or 2 or 4~~ *two, four, or six* years.

20 (d) A person convicted of violating subdivision (a) who has one  
21 or more prior convictions of this section or of paragraph (1) of  
22 subdivision (c) of Section 192, subdivision (a) or (b) of Section  
23 192.5 of this code, or of violating Section 23152 punishable under  
24 Sections 23540, 23542, 23546, 23548, 23550, or 23552 of, or  
25 convicted of Section 23153 of, the Vehicle Code, shall be punished  
26 by imprisonment in the state prison for a term of 15 years to life.  
27 Article 2.5 (commencing with Section 2930) of Chapter 7 of Title  
28 1 of Part 3 shall apply to reduce the term imposed pursuant to this  
29 subdivision.

30 (e) This section shall not be construed as prohibiting or  
31 precluding a charge of murder under Section 188 upon facts  
32 exhibiting wantonness and a conscious disregard for life to support  
33 a finding of implied malice, or upon facts showing malice  
34 consistent with the holding of the California Supreme Court in  
35 *People v. Watson*, 30 Cal. 3d 290.

36 (f) This section shall not be construed as making any homicide  
37 in the driving of a vehicle or the operation of a vessel punishable  
38 which is not a proximate result of the commission of an unlawful  
39 act, not amounting to felony, or of the commission of a lawful act  
40 which might produce death, in an unlawful manner.

(g) For the penalties in subdivision (d) to apply, the existence of any fact required under subdivision (d) shall be alleged in the information or indictment and either admitted by the defendant in open court or found to be true by the trier of fact.

SEC. 3. Section 23540 of the Vehicle Code is amended to read:

23540. (a) If a person is convicted of a violation of Section 23152 and the offense occurred within 10 years of a separate violation of Section 23103, as specified in Section 23103.5, 23152, or 23153, *of this code, or subdivision (b) or (c) of Section 655 of the Harbors and Navigation Code*, that resulted in a conviction, that person shall be punished by imprisonment in the county jail for not less than 90 days nor more than one year and by a fine of not less than three hundred ninety dollars (\$390) nor more than one thousand dollars (\$1,000). The person's privilege to operate a motor vehicle shall be suspended by the department pursuant to paragraph (3) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(b) Whenever, when considering the circumstances taken as a whole, the court determines that the person punished under this section would present a traffic safety or public safety risk if authorized to operate a motor vehicle during the period of suspension imposed under paragraph (3) of subdivision (a) of Section 13352, the court may disallow the issuance of a restricted driver's license required under Section 13352.5.

(c) This section shall become operative on September 20, 2005.

SEC. 4. Section 23546 of the Vehicle Code is amended to read:

23546. (a) If a person is convicted of a violation of Section 23152 and the offense occurred within 10 years of two separate violations of Section 23103, as specified in Section 23103.5, 23152, or 23153, *or of this code, subdivision (b) or (c) of Section 655 of the Harbors and Navigation Code, or any combination thereof*, that resulted in convictions, that person shall be punished by imprisonment in the county jail for not less than 120 days nor more than one year and by a fine of not less than three hundred ninety dollars (\$390) nor more than one thousand dollars (\$1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles as required in paragraph (5) of subdivision (a) of Section 13352. The court shall require the person

1 to surrender his or her driver's license to the court in accordance  
2 with Section 13550.

3 (b) A person convicted of a violation of Section 23152  
4 punishable under this section shall be designated as a habitual  
5 traffic offender for a period of three years, subsequent to the  
6 conviction. The person shall be advised of this designation pursuant  
7 to subdivision (b) of Section 13350.

8 SEC. 5. Section 23550 of the Vehicle Code is amended to read:

9 23550. (a) If a person is convicted of a violation of Section  
10 23152 and the offense occurred within 10 years of three or more  
11 separate violations of Section 23103, as specified in Section  
12 23103.5, ~~or Section 23152 or, 23153, or of this code, subdivision~~  
13 ~~(b) or (c) of Section 655 of the Harbors and Navigation Code, or~~  
14 any combination thereof, that resulted in convictions, that person  
15 shall be punished by imprisonment in the state prison, or in a  
16 county jail for not less than 180 days nor more than one year, and  
17 by a fine of not less than three hundred ninety dollars (\$390) nor  
18 more than one thousand dollars (\$1,000). The person's privilege  
19 to operate a motor vehicle shall be revoked by the Department of  
20 Motor Vehicles pursuant to paragraph (7) of subdivision (a) of  
21 Section 13352. The court shall require the person to surrender the  
22 driver's license to the court in accordance with Section 13550.

23 (b) A person convicted of a violation of Section 23152  
24 punishable under this section shall be designated as a habitual  
25 traffic offender for a period of three years, subsequent to the  
26 conviction. The person shall be advised of this designation pursuant  
27 to subdivision (b) of Section 13350.

28 SEC. 6. Section 23550.7 is added to the Vehicle Code, to read:

29 23550.7. (a) A person convicted of a violation of Section  
30 23153, 23550, or 23550.5 shall receive, in addition to any other  
31 punishment authorized by law, including Section 667.5 of the  
32 Penal Code, a full, separate, and consecutive three-year prison  
33 term for each prior felony conviction of Section 23153, 23550, or  
34 23550.5, whether or not the prior conviction resulted in a term of  
35 imprisonment.

36 (b) Notwithstanding any other provision of law, probation shall  
37 not be granted to, nor shall the execution or imposition of sentence  
38 be suspended for, a person found to come within the provisions  
39 of this section.

1 (c) Notwithstanding Section 1385 of the Penal Code, or any  
2 other provision of law, the court shall not strike an allegation under  
3 this section or a finding bringing a person within the provisions  
4 of this section.

5 (d) The existence of any fact required under subdivision (a)  
6 shall be alleged in the accusatory pleading and either admitted by  
7 the defendant in open court or found to be true by the trier of fact.

8 SEC. 7. Section 23560 of the Vehicle Code is amended to read:

9 23560. If a person is convicted of a violation of Section 23153  
10 and the offense occurred within 10 years of a separate violation  
11 of Section 23103, as specified in Section 23103.5, 23152, or 23153,  
12 *of this code, or subdivision (b) or (c) of Section 655 of the Harbors*  
13 *and Navigation Code*, that resulted in a conviction, that person  
14 shall be punished by imprisonment in the state prison, or in a  
15 county jail for not less than 120 days nor more than one year, and  
16 by a fine of not less than three hundred ninety dollars (\$390) nor  
17 more than five thousand dollars (\$5,000). The person's privilege  
18 to operate a motor vehicle shall be revoked by the Department of  
19 Motor Vehicles pursuant to paragraph (4) of subdivision (a) of  
20 Section 13352. The court shall require the person to surrender the  
21 driver's license to the court in accordance with Section 13550.

22 SEC. 8. Section 23566 of the Vehicle Code is amended to read:

23 23566. (a) If a person is convicted of a violation of Section  
24 23153 and the offense occurred within 10 years of two or more  
25 separate violations of Section 23103, as specified in Section  
26 23103.5, ~~or Section 23152~~ or, 23153, *of this code, or subdivision*  
27 *(b) or (c) of Section 655 of the Harbors and Navigation Code, or*  
28 any combination of these violations, that resulted in convictions,  
29 that person shall be punished by imprisonment in the state prison  
30 for a term of two, three, or four years and by a fine of not less than  
31 one thousand fifteen dollars (\$1,015) nor more than five thousand  
32 dollars (\$5,000). The person's privilege to operate a motor vehicle  
33 shall be revoked by the Department of Motor Vehicles pursuant  
34 to paragraph (6) of subdivision (a) of Section 13352. The court  
35 shall require the person to surrender the driver's license to the  
36 court in accordance with Section 13550.

37 (b) If a person is convicted of a violation of Section 23153, and  
38 the act or neglect proximately causes great bodily injury, as defined  
39 in Section 12022.7 of the Penal Code, to any person other than the  
40 driver, and the offense occurred within 10 years of two or more

1 separate violations of Section 23103, as specified in Section  
2 23103.5, or Section 23152 or 23153, or any combination of these  
3 violations, that resulted in convictions, that person shall be  
4 punished by imprisonment in the state prison for a term of two,  
5 three, or four years and by a fine of not less than one thousand  
6 fifteen dollars (\$1,015) nor more than five thousand dollars  
7 (\$5,000). The person's privilege to operate a motor vehicle shall  
8 be revoked by the Department of Motor Vehicles pursuant to  
9 paragraph (6) of subdivision (a) of Section 13352. The court shall  
10 require the person to surrender the driver's license to the court in  
11 accordance with Section 13550.

12 (c) If a person is convicted under subdivision (b), and the offense  
13 for which the person is convicted occurred within 10 years of four  
14 or more separate violations of Section 23103, as specified in  
15 Section 23103.5, or Section 23152 or 23153, or any combination  
16 of these violations, that resulted in convictions, that person shall,  
17 in addition and consecutive to the sentences imposed under  
18 subdivision (b), be punished by an additional term of imprisonment  
19 in the state prison for three years.

20 The enhancement allegation provided in this subdivision shall  
21 be pleaded and proved as provided by law.

22 (d) A person convicted of Section 23153 punishable under this  
23 section shall be designated as a habitual traffic offender for a period  
24 of three years, subsequent to the conviction. The person shall be  
25 advised of this designation pursuant to subdivision (b) of Section  
26 13350.

27 (e) A person confined in state prison under this section shall be  
28 ordered by the court to participate in an alcohol or drug program,  
29 or both, that is available at the prison during the person's  
30 confinement. Completion of an alcohol or drug program under this  
31 section does not meet the program completion requirement of  
32 paragraph (6) of subdivision (a) of Section 13352, unless the drug  
33 or alcohol program is licensed under Section 11836 of the Health  
34 and Safety Code, or is a program specified in Section 8001 of the  
35 Penal Code.

36 SEC. 9. Section 23612 of the Vehicle Code is amended to read:

37 23612. (a) (1) (A) A person who drives a motor vehicle is  
38 deemed to have given his or her consent to chemical testing of his  
39 or her blood or breath for the purpose of determining the alcoholic  
40 content of his or her blood, if lawfully arrested for an offense

1 allegedly committed in violation of Section 23140, 23152, or  
2 23153. If a blood or breath test, or both, are unavailable, then  
3 paragraph (2) of subdivision (d) applies.

4 (B) A person who drives a motor vehicle is deemed to have  
5 given his or her consent to chemical testing of his or her blood or  
6 urine for the purpose of determining the drug content of his or her  
7 blood, if lawfully arrested for an offense allegedly committed in  
8 violation of Section 23140, 23152, or 23153.

9 (C) The testing shall be incidental to a lawful arrest and  
10 administered at the direction of a peace officer having reasonable  
11 cause to believe the person was driving a motor vehicle in violation  
12 of Section 23140, 23152, or 23153.

13 (D) The person shall be told that his or her failure to submit to,  
14 or the failure to complete, the required chemical testing will result  
15 in a fine, mandatory imprisonment if the person is convicted of a  
16 violation of Section 23152 or 23153, and (i) the suspension of the  
17 person's privilege to operate a motor vehicle for a period of one  
18 year, (ii) the revocation of the person's privilege to operate a motor  
19 vehicle for a period of two years if the refusal occurs within 10  
20 years of a separate violation of Section 23103 as specified in  
21 Section 23103.5, or of Section 23140, 23152, or 23153, *of this*  
22 *code*, or of Section 191.5 or subdivision (a) of Section 192.5 of  
23 the Penal Code that resulted in a conviction, or if the person's  
24 privilege to operate a motor vehicle has been suspended or revoked  
25 pursuant to Section 13353, 13353.1, or 13353.2 for an offense that  
26 occurred on a separate occasion, or (iii) the revocation of the  
27 person's privilege to operate a motor vehicle for a period of three  
28 years if the refusal occurs within 10 years of two or more separate  
29 violations of Section 23103 as specified in Section 23103.5, or of  
30 Section 23140, 23152, or 23153, *of this code*, or of Section 191.5  
31 or subdivision (a) of Section 192.5 of the Penal Code, or any  
32 combination thereof, that resulted in convictions, or if the person's  
33 privilege to operate a motor vehicle has been suspended or revoked  
34 two or more times pursuant to Section 13353, 13353.1, or 13353.2  
35 for offenses that occurred on separate occasions, or if there is any  
36 combination of those convictions or administrative suspensions  
37 or revocations.

38 (2) (A) If the person is lawfully arrested for driving under the  
39 influence of an alcoholic beverage, the person has the choice of  
40 whether the test shall be of his or her blood or breath and the officer

1 shall advise the person that he or she has that choice. If the person  
2 arrested either is incapable, or states that he or she is incapable,  
3 of completing the chosen test, the person shall submit to the  
4 remaining test. If a blood or breath test, or both, are unavailable,  
5 then paragraph (2) of subdivision (d) applies.

6 ~~(B) If the person is lawfully arrested for driving under the~~  
7 ~~influence of any drug or the combined influence of an alcoholic~~  
8 ~~beverage and any drug, the person has the choice of whether the~~  
9 ~~test shall be of his or her blood, breath, or urine, and the officer~~  
10 ~~shall advise the person that he or she has that choice.~~

11 ~~(C) A person who chooses to submit to a breath test may also~~  
12 ~~be requested to submit to a blood or urine test if the officer has~~  
13 ~~reasonable cause to believe that the person was driving under the~~  
14 ~~influence of a drug or the combined influence of an alcoholic~~  
15 ~~beverage and a drug and if the officer has a clear indication that a~~  
16 ~~blood or urine test will reveal evidence of the person being under~~  
17 ~~the influence. The officer shall state in his or her report the facts~~  
18 ~~upon which that belief and that clear indication are based. The~~  
19 ~~person has the choice of submitting to and completing a blood or~~  
20 ~~urine test, and the officer shall advise the person that he or she is~~  
21 ~~required to submit to an additional test and that he or she may~~  
22 ~~choose a test of either blood or urine. If the person arrested either~~  
23 ~~is incapable, or states that he or she is incapable, of completing~~  
24 ~~either chosen test, the person shall submit to and complete the~~  
25 ~~other remaining test.~~

26 *(B) A person lawfully arrested for driving under the influence*  
27 *of a drug or the combined influence of an alcoholic beverage and*  
28 *a drug shall be required to take a blood test if the arresting officer*  
29 *has a clear indication that a blood test will reveal that the person*  
30 *is under the influence of a drug or the combined influence of an*  
31 *alcoholic beverage and a drug. If a blood test is unavailable, then*  
32 *a urine test may be given.*

33 (3) If the person is lawfully arrested for an offense allegedly  
34 committed in violation of Section 23140, 23152, or 23153, and,  
35 because of the need for medical treatment, the person is first  
36 transported to a medical facility where it is not feasible to  
37 administer a particular test of, or to obtain a particular sample of,  
38 the person's blood, breath, or urine, the person has the choice of  
39 those tests that are available at the facility to which that person  
40 has been transported. In that case, the officer shall advise the person

1 of those tests that are available at the medical facility and that the  
2 person's choice is limited to those tests that are available.

3 (4) The officer shall also advise the person that he or she does  
4 not have the right to have an attorney present before stating whether  
5 he or she will submit to a test or tests, before deciding which test  
6 or tests to take, or during administration of the test or tests chosen,  
7 and that, in the event of refusal to submit to a test or tests, the  
8 refusal may be used against him or her in a court of law.

9 (5) A person who is unconscious or otherwise in a condition  
10 rendering him or her incapable of refusal is deemed not to have  
11 withdrawn his or her consent and a test or tests may be  
12 administered whether or not the person is told that his or her failure  
13 to submit to, or the noncompletion of, the test or tests will result  
14 in the suspension or revocation of his or her privilege to operate  
15 a motor vehicle. A person who is dead is deemed not to have  
16 withdrawn his or her consent and a test or tests may be  
17 administered at the direction of a peace officer.

18 (b) A person who is afflicted with hemophilia is exempt from  
19 the blood test required by this section.

20 (c) A person who is afflicted with a heart condition and is using  
21 an anticoagulant under the direction of a licensed physician and  
22 surgeon is exempt from the blood test required by this section.

23 (d) (1) A person lawfully arrested for an offense allegedly  
24 committed while the person was driving a motor vehicle in  
25 violation of Section 23140, 23152, or 23153 may request the  
26 arresting officer to have a chemical test made of the arrested  
27 person's blood or breath for the purpose of determining the  
28 alcoholic content of that person's blood, and, if so requested, the  
29 arresting officer shall have the test performed.

30 (2) If a blood or breath test is not available under subparagraph  
31 (A) of paragraph (1) of subdivision (a), or under subparagraph (A)  
32 of paragraph (2) of subdivision (a), or under paragraph (1) of this  
33 subdivision, the person shall submit to the remaining test in order  
34 to determine the percent, by weight, of alcohol in the person's  
35 blood. If both the blood and breath tests are unavailable, the person  
36 shall be deemed to have given his or her consent to chemical testing  
37 of his or her urine and shall submit to a urine test.

38 (e) If the person, who has been arrested for a violation of Section  
39 23140, 23152, or 23153, refuses or fails to complete a chemical  
40 test or tests, or requests that a blood or urine test be taken, the

1 peace officer, acting on behalf of the department, shall serve the  
2 notice of the order of suspension or revocation of the person's  
3 privilege to operate a motor vehicle personally on the arrested  
4 person. The notice shall be on a form provided by the department.

5 (f) If the peace officer serves the notice of the order of  
6 suspension or revocation of the person's privilege to operate a  
7 motor vehicle, the peace officer shall take possession of all driver's  
8 licenses issued by this state that are held by the person. The  
9 temporary driver's license shall be an endorsement on the notice  
10 of the order of suspension and shall be valid for 30 days from the  
11 date of arrest.

12 (g) (1) The peace officer shall immediately forward a copy of  
13 the completed notice of suspension or revocation form and any  
14 driver's license taken into possession under subdivision (f), with  
15 the report required by Section 13380, to the department. If the  
16 person submitted to a blood or urine test, the peace officer shall  
17 forward the results immediately to the appropriate forensic  
18 laboratory. The forensic laboratory shall forward the results of the  
19 chemical tests to the department within 15 calendar days of the  
20 date of the arrest.

21 (2) (A) Notwithstanding any other provision of law, a document  
22 containing data prepared and maintained in the governmental  
23 forensic laboratory computerized database system that is  
24 electronically transmitted or retrieved through public or private  
25 computer networks to or by the department is the best available  
26 evidence of the chemical test results in all administrative  
27 proceedings conducted by the department. In addition, any other  
28 official record that is maintained in the governmental forensic  
29 laboratory, relates to a chemical test analysis prepared and  
30 maintained in the governmental forensic laboratory computerized  
31 database system, and is electronically transmitted and retrieved  
32 through a public or private computer network to or by the  
33 department is admissible as evidence in the department's  
34 administrative proceedings. In order to be admissible as evidence  
35 in administrative proceedings, a document described in this  
36 subparagraph shall bear a certification by the employee of the  
37 department who retrieved the document certifying that the  
38 information was received or retrieved directly from the  
39 computerized database system of a governmental forensic

1 laboratory and that the document accurately reflects the data  
2 received or retrieved.

3 (B) Notwithstanding any other provision of law, the failure of  
4 an employee of the department to certify under subparagraph (A)  
5 is not a public offense.

6 (h) A preliminary alcohol screening test that indicates the  
7 presence or concentration of alcohol based on a breath sample in  
8 order to establish reasonable cause to believe the person was  
9 driving a vehicle in violation of Section 23140, 23152, or 23153  
10 is a field sobriety test and may be used by an officer as a further  
11 investigative tool.

12 (i) If the officer decides to use a preliminary alcohol screening  
13 test, the officer shall advise the person that he or she is requesting  
14 that person to take a preliminary alcohol screening test to assist  
15 the officer in determining if that person is under the influence of  
16 alcohol or drugs, or a combination of alcohol and drugs. The  
17 person's obligation to submit to a blood, breath, or urine test, as  
18 required by this section, for the purpose of determining the alcohol  
19 or drug content of that person's blood, is not satisfied by the person  
20 submitting to a preliminary alcohol screening test. The officer shall  
21 advise the person of that fact and of the person's right to refuse to  
22 take the preliminary alcohol screening test.

23 SEC. 10. No reimbursement is required by this act pursuant to  
24 Section 6 of Article XIII B of the California Constitution because  
25 the only costs that may be incurred by a local agency or school  
26 district will be incurred because this act creates a new crime or  
27 infraction, eliminates a crime or infraction, or changes the penalty  
28 for a crime or infraction, within the meaning of Section 17556 of  
29 the Government Code, or changes the definition of a crime within  
30 the meaning of Section 6 of Article XIII B of the California  
31 Constitution.